Visiting for care home residents

This is a summary of the key law and guidance relevant to visiting in care homes in England. It covers:

1. Government guidance on visiting in care homes
2. Government guidance on visits out of care homes
3. Legal regulations relevant to visiting
4. Other laws relevant to visiting, setting out legal rights and standards

The government guidance should be read in the context of these legal standards and duties.

This document is not legal advice

1. Government guidance on visiting people *in* care homes

The Government guidance on visiting in care homes is available here (as updated on 4 March).

Overall approach

The guidance states that the "default position" is that all care homes should enable visiting. It recognises that "visiting is a central part of care home life" which is "crucially important for maintaining health and wellbeing and quality of life of residents". It recognises how vital it is for family and friends to maintain relationships and contribute to residents' care and support. Whilst recognising that visiting brings risk of transmission, "these risks can be managed and mitigated" and should be balanced against the importance of visiting and its benefits.

All care homes should enable:

- **Nominated visitors**: regular visits from a single, named person, indoors
- **Essential caregivers**: additional, more regular support where a person's presence or support is central to maintaining a resident's health and wellbeing
- **Additional visits**: with other relatives/friends outdoors, behind screens/windows or in pods
- **Exceptional circumstances**: for residents nearing the end of life (now defined as the last year of life) or where there are other 'exceptional circumstances'

In the event of an outbreak, visits from essential caregivers and in exceptional circumstances should continue.

The onus is on care home managers to decide how visits should happen to meet the needs of their residents individually and collectively, and to design individual visiting arrangements. When developing their visiting policies, providers should undertake individual risk assessments, taking into account the rights and needs of the individual residents. It stresses "the individual resident, their views, their needs and wellbeing should be considered" and decisions should be taken in light of providers' legal duties under the Equality Act and the Human Rights Act.

Care homes should involve the resident and their family/friends in decisions and share the risk assessments and visiting policies with them.

Nominated visitors
All care homes should allow regular, indoor visits for each resident with a named visitor.
Key points:

- Nominated visitors will have to test negative before each visits (using rapid tests which the home provide on-site prior to the visit), wear appropriate PPE, can hold hands but should otherwise minimise contact with the resident.
- The resident will choose who their nominated visitor will be. For residents assessed as lacking capacity to decide, the home should discuss this with their family, friends or others who may have usually visited and use the Mental Capacity Act to make a decision in the resident's best interests.
- As far as possible, the nominated visitor should be the same person each time. Care homes are advised to take a 'pragmatic' approach.
- The guidance says the length and frequency of the visit will depend on the layout of the home and how many other families wish to visit.
- The guidance is not prescriptive about where the visits take place, advising it is in a well-ventilated room.

Essential caregivers
In addition to the nominated visitor, regular support can be provided by an essential caregiver.
Key points:

- Intended for circumstances where the visitor's presence or support is central to the health and wellbeing of the resident.
- Can have close physical contact, spend longer in the home and access areas other visitors cannot.
- Individual assessment will weigh up the benefit and risk of such support.
- Usually only one per resident, but depends on the individual circumstances.
- Could be an additional person to the nominated visitor.
- Essential caregivers to have same testing, PPE and infection control arrangements as staff.
- They should agree with staff what tasks they will and will not be performing (it should not include clinical care or medical tasks).

Outdoor or screened visits
In addition to above visits, these will allow residents to see more people.
The guidance states providers are best placed to decide how these visits happen in practice, but sets out:

- Visits should be in the open air where possible, such as under a covering (2 meters apart) or at a window.
- Visits can take place in pods/a dedicated room with a 'substantial screen', which must only be used by one resident and 'visiting party' at a time and cleaned after.
- Residents are limited to a maximum of two visitors at one time, but an essential caregiver can also be present to support the resident.
- Social distancing must be maintained and appropriate PPE used throughout the visit.

Exceptional circumstances such as end of life
Visits in exceptional circumstances such as end of life "should continue in all circumstances" and "always be supported and enabled".
Key points:

- The guidance defines end of life care as the last year of life, supporting people to live as well as possible and to die with dignity.
- Care homes should ensure the right visiting arrangements are in place for each resident, facilitating visiting as much as possible, appropriate for the individual's situation.

- As a resident approaches the final months, care homes should communicate well to enable good and timely decisions around care and allow visits.
- Visits should be enabled in the final months and weeks, not just the final days or hours.
- Lateral flow ('rapid') tests should be used for these visits.

Decisions for different residents/groups of residents
The guidance states it may be necessary or appropriate for care homes to have different visiting rules for different residents, based on an assessment of the risk of virus and the potential benefits of visits. It says providers should work with the resident and family/friends to develop a "tailored visiting policy" for residents who find COVID-secure visits challenging (such as those unable to leave their rooms, people living with dementia or who may lack capacity on relevant decisions).

Precautions / stopping visits
The guidance calls for 'robust practices for infection prevention and control', including:
- Appropriate PPE is always worn (there is separate guidance care homes should use to identify the PPE required), PPE should be provided for free.
- For residents who have difficulty accepting visitors wearing face coverings, an individual risk assessment should be carried out for the resident and the visitor, including consideration of clear face coverings or visors.
- All visitors should be screened for symptoms of acute respiratory infection (this is not the same as testing).

The guidance says that if an outbreak occurs care homes should stop visiting, except in exceptional circumstances like end of life and for essential caregivers, until the outbreak is confirmed as over (defined as 28 days after the last confirmed/suspected case). It states local authorities may have powers to direct homes to close to visiting. In such instances, homes should set out alternative options for helping families keep in touch and keep relatives updated on the person's mental and physical health.

The guidance also sets out the roles of the local Director of Public Health and local Director of Adult Social Services, in supporting care homes to ensure visiting happens. Their advice to care homes on infection rates should recognise local differences and allow care homes to use their discretion, stressing that blanket approaches are not appropriate. The Director of Public Health may also advise care homes on allowing more visiting opportunities than the generic advice set out the guidance.

Other relevant info
The guidance states that care homes should support visitors, and give tips, on how to prepare for the visit. The visiting policy should be made available and/or communicated to residents and families.

The guidance confirms (several times) that vaccination is not required before a visit can go ahead.

There is no time limit set on visits in the guidance, or a requirement for visits to be supervised.

The Government stress that this is only a first step and it wants to go further to allow more visitors (two per resident), which it will assess on 12 April.

The guidance is only about visiting in care homes. Separate guidance on visits out of care homes is summarised below. Guidance for supported living settings will be available 'shortly'.

2. Government guidance on visits *out* of care homes

Government guidance on visits out of care homes is available here (updated on 8 March).

Whilst recognising that "outward visits are an important part of life for many in residential care", the guidance states that these "should only be considered for care home residents of working age" for the duration of the current restrictions (with no end date specified).

For older people living in care, it states providers should support such visits in exceptional circumstances, such as to visit a friend or relative at the end of their life. The resident and all members of the household hosting the visit must have tested negative immediately preceding the visit. On return to the care home, the resident will need to isolate for 14 days. Such visits will be stopped in the event of an outbreak in the care home.

3. Legal regulations relevant to visiting

The Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020 came into force on 20 December. They impose restrictions on leaving home and 'gatherings' across England.

They contain important exceptions relevant for visiting someone in a care home, including:

- To visit someone "receiving treatment in a hospital or staying in a hospice or care home" or to accompany them to a medical appointment. The person must be a member of your household, a close family member or a friend (see Schedule 3A, Part 1, section 2(7)(e) and Part 2, section 7(3))
- Where leaving home/a gathering is "reasonably necessary… to provide care or assistance, including relevant personal care, to a vulnerable person" (see Schedule 3A, Part 1, section 2(5)(c) and Part 2, section 6(4)(d))
- To visit a person you "reasonably believe" is dying. The person must be a member of your household, a close family member or a friend (see Schedule 3A, Part 1, section 2(9) and Schedule 3A, Part 2, section 7(2)). Note the onus is on whether the *visitor* reasonably believes the person is dying.
- Where gathering is reasonably necessary for respite care being provided for a vulnerable or disabled person (see Schedule 3A, Part 2, section 6(9)(a))

Definition of 'personal care'
Personal care is defined as physical assistance to a person who needs it due to age, illness or disability in connection with eating, drinking, toileting, washing/bathing, dressing, oral care, care of skin/hair/nails. It also covers prompting or supervising of any of these activities, where the person is unable to make a decision about carrying out those activities without it.

4. Relevant law and regulations

Decisions about visiting engage residents' **right to family life**, which covers maintaining relationships, and their **right to private life**, which covers physical and mental well-being and their autonomy to make their own choices (all protected in UK law by **Article 8 of the Human Rights Act**). Whilst these rights can be restricted, including for the protection of health or the rights of others, a restriction must be proportionate. The onus is on the service provider to justify their interference with these rights, by demonstrating that the decision they have taken is the least

restrictive option for that person, having considered the alternatives. For example, if the provider is only offering strict 30 minute visits to all residents due to lack of time available in a dedicated meeting room, is that proportionate for a resident who is distressed or confused and may take 30mins to 'settle into' the visit? Has the provider carried out an individual assessment and considered other options, such as allowing longer visits in the resident's own room?

The right to private life is also relevant to ensuring residents can have private, unsupervised contact with their relatives/friends/advocate/other professionals. The duty under the Human Rights Act to respect and protect rights lies not only on public authorities like the government and local authorities, but also on care homes where the care is arranged or paid for (in any part) by the local authority (see section 73 of the Care Act).

Care homes must carry out **individual risk assessments** about visiting. This is required by the Human Rights Act (above) and the **Equality Act**. The latter prohibits indirect discrimination and applies to all care home residents regardless of how their care was arranged or is funded. Blanket decisions will not be appropriate as homes are required to consider individual needs and apply different rules for different residents depending on their individual circumstances.

Where a resident is assessed as lacking capacity to decide about a visit, providers will need to ensure they are adhering to the **Mental Capacity Act** and acting in the resident's best interests and imposing the least restrictive option. The principle of well-being underpinning the **Care Act** also continues to apply.

The regulator, the **Care Quality Commission** (CQC), have issued a statement stressing blanket approaches are unacceptable and the rights of individuals must be paramount when care homes are deciding visiting plans. The government guidance on visiting in care homes makes clear that the CQC has regulatory powers that can be used where they have concerns about visiting. Concerns such blanket bans, residents being discouraged from regular contact with relatives/friends or not being allowed to see other professionals may trigger an inspection by CQC which could lead to enforcement action.

CQC's Regulation 12 (in the Health and Social Care Act 2008 (Regulated Activities) Regulations) requires providers, when considering risk, to act reasonably and adhere to recognised guidance and the principles of the Mental Capacity Act, where relevant. CQC Regulation 10 requires them to provide care and treatment in a way that ensures people's dignity and treats them with respect at all times. CQC Regulation 9 requires the provision of care to be person-centred and include individuals in the planning process where they are able to do so, with support if necessary, linking to the Mental Capacity Act to ensure family/friends/advocates are included in the process where relevant.

More support

If you would like further information or any advice or support on how this applies to you or your relative/friend, please get in touch with us. The Relatives & Residents Association Helpline can help you to explore what this guidance means for your family, and support you to use these legal standards to negotiate with a care home for better contact with your relative.

Tel: 020 7359 8136 (9.30am – 1pm Monday to Friday)
Email: helpline@relres.org
Webchat: available at www.relres.org